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OFFICE OF PETITIONS

In re Application of :
Yoshifumi Noge et al :
Application No. 10/634,551 : **DECISION ON PETITION**
Filed: August 5, 2003 :
Attorney Docket No. 69806 CCD :

This is a decision on the petition, filed October 9, 2007, which is being treated as a petition under 37 CFR 1.181 requesting withdrawal of the holding of abandonment in the above-identified application, petition under 37 CFR 1.137(a) to revive the application unavoidable and petition under 37 CFR 1.137(b) to revive the application unintentional.

The petition under 37 CFR 1.181 is **DISMISSED**.

This application was held abandoned for failure to timely pay the issue and publication fees on or before August 31, 2007, as required by the Notice of Allowance and Fee(s) Due (Notice), mailed May 31, 2007. A Notice of Abandonment was mailed September 26, 2007.

In the present petition, petitioner request that the Office withdraw the holding of abandonment due to the application was withdrawn from issue before the issue fee period expired. Specifically, petitioner states "this is a petition to withdraw the holding of abandonment because the application was withdrawn from issue before the period originally set for payment of the issue and publication fees expired, and no new period for payment of such fees has been set; hence, there has been no failure to make timely payment of the issue and publication fees, and therefore the application has not become abandoned."

The Notice of Allowance mailed May 31, 2007 gave applicant three (3) months to reply. Office record does not show a petition to withdraw from issue was ever received. Since the issue and publication fees were not paid before the August 31, 2007 due date, this application became abandoned for failure to pay these fees. Therefore, the petition to withdraw the holding of abandonment under 37 CFR 1.181 is dismissed.

The petition under 37 CFR 1.137(a) is **DISMISSED**.

Petitioner states "In the alternative, if it is deemed that the application was not withdrawn from issue, this is a petition to revive the above-identified application because the delay (in payment of the issue and publication fees) that caused the abandonment was unavoidable."

A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(l); (3) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d). The instant petition lacks item (1).

Petitioner must provide evidence necessary to establish unavoidable delay. Petitioner states "Mr. Teng was prepared to pay the issue and publication fees on August 31, 2007 and had form PTOL-85B completed for his signature and had obtained a check for the fees (see EXHIBIT 1 attached hereto), when he received a telephone call from the examiner in which the Examiner advised him that the application was being withdrawn from issue for preparation of a new Office Action based on previously unconsidered art, and that the issue fee need not be paid."

Unfortunately, this information is incorrect. The issue fee must be paid within three months of the Notice of Allowance or the application will become abandon for failure to pay the issue and publication fees. Petitioner is directed to See 37 CFR 1.2 which states "All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt." Therefore, the petition under 37 CFR 1.137(a) is dismissed.

The petition under 37 CFR 1.137(b) is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of payment of the Issue fee and Publication Fee; (2) the petition fee; (3) the required statement of unintentional delay have been received. Accordingly, the issue fee is accepted as having been unintentionally delayed.

As authorized, the \$1540 petition fee is being applied to petitioner's deposit account number.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3210. This matter is being referred to the Office of Data Management for further processing.

/Irvin Dingle/
Irvin Dingle
Petitions Examiner
Office of Petitions

